U. S. S E N A T E

Republican Policy Committee

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Standard for Reviewing Decisions of State Courts in S. 735 Will Help Stop Endless Habeas Appeals

S. 735 proposes to modify the current standard that allows federal courts to have virtually unlimited review of the decisions of state courts. S. 735's standard will require federal courts to give greater deference to the decisions of state court which, like federal courts, are required to uphold the Constitution and laws of the United States.

Senator Biden's amendment no. 1224 seeks to eliminate S. 735's improved standard. The amendment should be opposed.

America's current system of multi-layered state and federal appeals and collateral review has resulted in enormous delays and unwarranted doubt — and it does this without any improvement in the quality of American justice. The delays and lack of finality have sapped public confidence in the criminal justice system, and they undermine the proper roles of state and federal courts. A system incapable of enforcing lawfully imposed sentences does not promote justice; in fact, it undermines justice.

- **The single most important habeas provision in S. 735 is the improved standard of review.** The standard of review determines the degree of deference a federal court will give to the decisions of a state court. Currently, federal courts have virtually unlimited review of a state court's legal determinations. Under the proposed change in S. 735, federal courts would be required to defer to the determinations of a state court unless the state court's decision was "contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court . . . ."

- **This is a wholly appropriate standard.** It enables the federal court to overturn state court decisions that clearly contravene federal law or that improperly apply clearly established federal law.

- **There is no reason that federal courts should retry cases that have been properly adjudicated by the states.** The improved standard in S.735 will go a long way to ending the improper review of state court decisions. Of course, state courts are required to uphold the Constitution and to faithfully apply federal law.

Remember, federal habeas review takes place only after there has been a trial, direct review by a state appellate court, a second review by a state supreme court, and then a petition to the United States Supreme Court. Thus, there is a trial and at least three levels of appellate review. In a capital case, the petitioner often files a clemency petition, so the state's executive branch also has an opportunity to review the case.

But that is not the end. In virtually every state, a post conviction collateral proceeding exists. In other words, the prisoner can file a habeas corpus petition in state court. That petition is routinely subject to appellate review by an intermediate court and the state supreme court. The prisoner may then file a second petition in the United States Supreme Court, and may also, of course, seek a second review by the governor.

So, after conviction, there are at least six levels of review by state courts and two rounds of review — at least in capital cases — by the state executive. All of this occurs *before* federal habeas review takes place.

- **State attorneys general believe that the review standard is the single most important provision in this bill.** Meaningful reform will reduce the repeated assaults on fair and valid state convictions. A new standard of review is necessary to stop spurious, repetitive petitions.

There are many examples of the misuse of the writ of habeas corpus. In Utah, for example, convicted murderer William Andrews delayed the imposition of a constitutionally imposed death sentence for over 18 years. His guilt was never in question. He was not an innocent person seeking freedom from an illegal punishment. Rather, he committed a particularly heinous crime that included murder, rape, and torture, and yet for nearly 20 years he frustrated a lawfully imposed sentence. One can imagine the effect this had on the families of the victims.

Probably every state in the Union has its Andrews case, and many states have dozens and some states have hundreds. As of January 1, 1995, there were approximately 2,976 inmates on death row. Yet, the states have executed only 263 criminals since 1973, some 38 of those last year. Federal habeas proceedings have become, in effect, a second, third, and fourth round of appeals in which convicted criminals are afforded the opportunity to relitigate claims already considered and rejected by state courts.

The new standard in the bill should be supported and weakening amendments should be rejected.

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[Source: This paper is based on information provided to RPC by the Senate Judiciary Committee.]